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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND  
MAR 26 1997

CLAUDIA WILKEN  
U.S. DISTRICT JUDGE

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,	)	No. C-94-2307 CW
	)	
Plaintiffs,	)	
	)	STIPULATION AND ORDER FOR
v.	)	PERIODIC COLLECTION OF
	)	ATTORNEYS' FEES AND COSTS
PETE WILSON, et al.,	)	
	)	
Defendants.	)	
	)	

Section G of the Remedial Order and Injunction dated September 20, 1996, requires the parties to negotiate an order for the periodic collection of post-judgment attorneys fees and costs. The parties, by their undersigned counsel, do stipulate and the Court, having considered the matter, hereby orders as follows:

1. Plaintiffs' counsel will submit quarterly statements to defendants' counsel for post-judgment attorneys' fees and costs. The statements will itemize the time spent, subject activity, applicable attorney and other personnel billing rates, and costs and expenses with sufficient particularity to

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1 allow the defendants and the Court to identify the efforts  
2 undertaken and to determine whether the activity is appropriately  
3 compensable. The first quarterly statement of each year will  
4 identify the billing rates plaintiffs' counsel seeks for that  
5 year. The billing statements submitted by plaintiffs' counsel  
6 shall not include declarations or other supporting pleadings.  
7 Such declarations or other supporting pleadings shall be prepared  
8 only for and at the time of filing any motion to compel.

9           2. Upon receipt of plaintiffs' statement each  
10 quarter, defendants will have thirty days in which to respond  
11 with their objections and the bases therefore. As to disputed  
12 items, including the proposed billing rates in the first  
13 quarterly statement, plaintiffs' and defendants' counsel are  
14 required to meet and confer within thirty (30) days after  
15 defendants have notified plaintiffs of any disputed item(s). If  
16 the parties are able promptly to resolve any part or all of the  
17 fee disputes, counsel shall immediately prepare a stipulated  
18 order for payment of the fees not subject to defendants'  
19 objections. Both sides shall sign the order and present it to  
20 the Court for entry. Defendants shall have forty-five days from  
21 the entry of the order to pay the undisputed fees. Interest on  
22 these fees and costs will run from the date the order is entered  
23 by the Court, accruing at the rate provided by 28 U.S.C. § 1961.

24           3. If defendants refuse to sign any stipulated  
25 payment order, or unreasonably delay the process described in  
26 paragraph 2, above, plaintiffs' counsel may submit directly to  
27 the Court an unstipulated form of order for collection of fees  
28 that are not disputed, together with a certification of counsel

1 under penalty of perjury setting forth the relevant facts and  
2 circumstances. Defendants' counsel may respond within five court  
3 days of receipt of the proposed order and certification.  
4 Plaintiffs' counsel may reply within two court days after receipt  
5 of defendants' response, if any. The Court will rule on  
6 plaintiffs' application without conducting a hearing unless it  
7 considers such a hearing necessary, and will issue plaintiffs'  
8 proposed order or another appropriate order unless defendants  
9 show a reasonable basis for disputing the fees and expenses  
10 plaintiffs have claimed to be undisputed. If any party  
11 determines that systematic problems in the meet and confer  
12 process have arisen, that party may move for further modification  
13 of this process, by noticed motion made pursuant to the Federal  
14 Rules of Civil Procedure and the Rules of this Court.

15           4. Plaintiffs will file a yearly motion to compel  
16 payment of disputed items, if necessary, not later than sixty  
17 (60) days after the parties meet and confer with respect to the  
18 statement covering the fourth quarter of each year. If  
19 defendants oppose any billing rates plaintiffs' counsel will  
20 bring a motion to compel on this issue following the first  
21 quarterly statement of each year.

22           5. In the event that an unusually large number of  
23 hours or a significant issue is in dispute, plaintiffs may bring  
24 a quarterly motion to compel on those issues alone. Any such  
25 quarterly motion to compel will be filed no later than thirty  
26 (30) days after the parties have met and conferred on the  
27 quarterly statement at issue. Such motions will be briefed and  
28 heard on the usual schedule provided by the local rules.



1           6.    Plaintiffs reserve their right to seek pre-  
2 judgment interest on any disputed amounts sought under paragraphs  
3 4 and 5 above. Post-judgment interest on any disputed amounts  
4 will accrue at the rate provided by 28 U.S.C. § 1961 from the  
5 date any order awarding such amounts is entered by the Court.

6           7.    The standard of review to be applied to disputed  
7 billing items will be as follows: plaintiffs shall be entitled  
8 to be compensated for attorneys' fees and costs reasonably  
9 necessary to ensure defendants' compliance with Section A of the  
10 remedial order and injunction dated September 20, 1996. However,  
11 the parties dispute the standard of review applicable to all  
12 further activity. The parties' positions with regard to further  
13 activity is as follows:

14           a.    It is plaintiffs' position that defendants are  
15 obligated to pay plaintiffs' fees, costs, and reasonable  
16 litigation expenses that are useful and necessary in  
17 developing a remedy and monitoring compliance with the  
18 Court's orders. Plaintiffs' position is based on Section G  
19 of the remedial order which states that "[p]laintiffs shall  
20 be entitled to fees, litigation expenses and costs as  
21 authorized by law to ensure compliance with this Order and  
22 subsequent remedial orders, including those implementing the  
23 guidelines, plans, procedures, policies and evaluations set  
24 forth above, . . ."

25           b.    It is defendants' position that they are  
26 obligated to pay plaintiffs' fees, costs, and reasonable  
27 litigation expenses only if plaintiffs prevail in  
28 demonstrating that the relief sought is mandated by the ADA

1 or Rehabilitation Act and only to the extent otherwise  
2 required under the law applicable at the time of the  
3 dispute. Similarly, if plaintiffs seek a court order  
4 requiring defendants to take any specific action in  
5 implementing defendants' evaluations, guidelines, plans,  
6 policies and procedures, it is defendants' position that  
7 they are obligated to pay plaintiffs' fees, costs, and  
8 reasonable expenses only if plaintiffs prevail in  
9 demonstrating that the relief sought is mandated by the ADA  
10 or Rehabilitation Act and only to the extent otherwise  
11 required under the law applicable at the time of the  
12 dispute.

13 8. So long as the plaintiffs' counsel submit  
14 quarterly billing statements to the defendants in a timely  
15 fashion all compensable activities will be awarded, now and in  
16 the future, at the rates current at the time the billing  
17 statements are submitted to the defendants instead of at historic  
18 rates.

19 9. Defendants shall pay the full amounts ordered  
20 paid, with any legal interest owing, no later than forty-five  
21 (45) days after the date each payment order is entered by the  
22 Court. If payment is not voluntarily made by the 45th day,

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counsel for plaintiffs may obtain said amount by writ of execution upon state funds and/or other appropriate accounts by certification under penalty of perjury that voluntary payment has not been made.

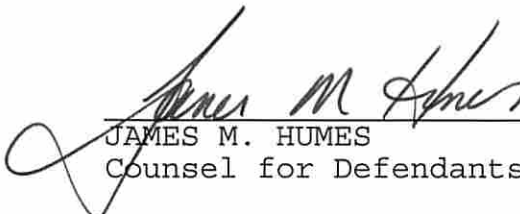
We do so stipulate.

Dated: March 25, 1997

  
DONALD SPECTER  
Counsel for Plaintiffs

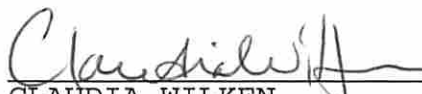
Dated:

3/21/97

  
JAMES M. HUMES  
Counsel for Defendants

IT IS SO ORDERED.

Dated: MAR 26 1997

  
CLAUDIA WILKEN  
United States District Judge